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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Promotion and protection of the right to freedom of opinion and expression, report of the Special Rapporteur, Mr. Abid Hussain, submitted pursuant to Commission on Human Rights resolution 1996/53

Addendum

Mission to Turkey

CONTENTS

	Paragraphs	Page
Introduction	1 - 5	2
I. PRINCIPAL CONSIDERATIONS AND CONCERNS	6 - 47	2
A. Communications	6 - 24	2
B. Legal framework	25 - 33	5
C. Information received by the Special Rapporteur	34 - 47	7
II. CONCLUDING OBSERVATIONS	48 - 56	10
III. RECOMMENDATIONS	57 - 63	12
Postscript	64 - 65	13
Annex: persons with whom the Special Rapporteur met during his visit to Turkey		14

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Introduction

1. This report presents an analysis of information received by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, during his visit to the Republic of Turkey from 21 to 24 September 1996, as well as information received from individuals and non-governmental organizations concerning allegations of violations of the right to freedom of opinion and expression. The report concentrates on events that took place in 1995 and 1996.

2. By a letter dated 5 May 1995 addressed to the Permanent Representative of Turkey to the United Nations Office at Geneva, the Special Rapporteur sought the cooperation of the Turkish Government for a visit to Turkey. The Government immediately agreed to this request. However, circumstances that included a moratorium on all travel by officials of the United Nations and changes in the Turkish Government led to a number of delays. In September 1996, the visit was agreed upon.

3. The Special Rapporteur arrived in Turkey on 20 September 1996 and left on 25 September 1996. He visited Istanbul, Diyarbakir and Ankara. He was able to draw great benefit from the cooperation extended by the Government during the visit. The Special Rapporteur would like to stress that he has much appreciated the perfect balance the Turkish Government has struck between assistance and discretion in receiving the mission. The mission enjoyed full freedom of movement, including a visit to Diyarbakir, which is governed under a state of emergency, and visits to several prisons where persons were allegedly held in violation of their right to freedom of expression. The mission also enjoyed full freedom of inquiry. The programme the Special Rapporteur had forwarded to the Government was fully complied with, not only to the letter but also to the spirit of the agreement underlying it and in spite of the extremely short notice involved.

4. The Special Rapporteur met with representatives of the Government, the judiciary and non-governmental organizations active in the field of human rights. He also met with lawyers, writers, press professionals, politicians, witnesses and victims of alleged human rights violations, and other members of the civil society who were of interest for his mandate. Among the last group were four persons who are currently serving prison terms ranging from one to 200 years, to which they had been sentenced by courts applying limitations to the right to freedom of expression.

5. A list of persons with whom the Special Rapporteur met during his visit is contained in the annex to this report.

I. PRINCIPAL CONSIDERATIONS AND CONCERNS

A. Communications

6. The Special Rapporteur has received a large number of allegations concerning infringements on the right to freedom of opinion and expression in Turkey. Many of these allegations could not be seriously considered for lack of precision in the description of the case. Others proved to be tendentious at best in their presentation of the facts and laws concerning a case or manifestly sought to further political objectives to the detriment of relevant

human rights considerations. Only a minority of the allegations that were communicated to the Special Rapporteur met basic standards of accuracy and good faith. These communications provided the necessary minimum of factual and legal information in sufficient detail to raise an initial doubt as to whether Turkey was fully complying with its obligations to protect the right to freedom of opinion and expression. In doing so, these communications clearly proved to be motivated by the sole objective to expose or seek redress of alleged violations of the right to freedom of opinion and expression. A small number of such cases are briefly described in this section.

7. In addition, the Special Rapporteur refers to the cases he had previously transmitted to the Turkish Government the status of which is reflected in his reports to the Commission on Human Rights at its fifty-first and fifty-second sessions (E/CN.4/1995/32 and E/CN.4/1996/39).

8. In 1995, 1,080 writers, publishers, intellectuals and artists collectively issued a book entitled Freedom of Thought in Turkey. The book consisted of a collection of writings for which the authors were on trial or imprisoned. Of this group, 185 persons were charged under article 8 of the Anti-Terror Law. At the time of the visit of the Special Rapporteur, trials were continuing. On 7 March 1996, the writer Mr. Yasar Kemal received a suspended prison sentence of 20 months for his contribution to the book.

9. The member of Parliament and deputy for Diyarbakir, Ms. Leyla Zana, has been sentenced to a prison term of 15 years, upon the lifting of her parliamentary immunity, allegedly for having had contacts with members of the Kurdish Workers' Party (PKK) and having propagated, in the Kurdish language in Parliament, a just solution for the Kurdish problem.

10. The member of Parliament and President of the Party for Democracy and Renewal, Mr. Ibrahim Aksoy, has been imprisoned since October 1995 following multiple convictions based, among others, on the application of article 8 and revised article 8 of the Anti-Terror Law. Among his sentences was one for having requested, in Parliament, "to solve the Kurdish problem in a just and impartial way". Allegedly, this statement was held by the court as incitement to violence.

11. The writer and sociologist Dr. Ismail Besikci has been repeatedly sentenced to prison terms totalling over 100 years and a large number of fines. These fines, in turn, were commuted to prison sentences upon non-payment to the effect that the total number of years of imprisonment to which he is currently sentenced has passed 200. Allegedly, these sentences related to Dr. Besikci's research on census data of ethnic Kurds in Turkey and on his defence of the idea of an independent State of "Kurdistan".

12. The publisher Ms. Ayse Nur Zarakolu, founder of the Belge publishing house, has been repeatedly sentenced to prison terms and fines for the publication of books the content of which allegedly posed a risk to the security of the State. Allegedly, on 30 January 1995, Ms. Zarakolu was sentenced to 2½ years' imprisonment for a series of publications, among which a translation in Turkish of the book The Armenian Taboo by the French writer Mr. Yves Ternon. Allegedly, on 20 March 1995, she was again sentenced to six months' imprisonment and a fine of 250 million liras for the publication of the book Bekaa by Mr. Hasan Bildirici.

13. On 16 August 1995, the daily Yeni Politika was allegedly banned from further publication by order of the Istanbul Criminal Court on the grounds that it violated the press law which prohibits publications that had previously been closed down by court order from continuing to operate under a changed name. For the same reason, the daily Ozgur Ulke had allegedly been banned on 2 February 1996. Both dailies were allegedly judged to be successors to the daily Ozgur Gundem which had been closed down by court order in April 1994 for having disseminated separatist propaganda.

14. Allegedly, on 27 September 1995, Ms. Ismet Celikaslan was detained in Mersin, shortly after stating on television that her daughter had been raped while in police custody in Ankara. Allegedly, Ms. Celikaslan was arrested on 2 October 1995 and charged with support of an illegal organization.

15. During the night of 7 to 8 October 1995, anti-terror police reportedly arrested four journalists and three staff members of the weekly Atilim, in Istanbul. The persons concerned are Ms. Sultan Secik, Mr. Bayram Namaz, Mr. Ramazan Basci, Mr. Metin Yesil, Mr. Aslan Yucesan, Mr. Sevil Yesil and Mr. Ferahmuz Lule. Reportedly, police indicated that six of these seven persons were detained at the anti-terror department of the Istanbul Security headquarters where they were to be questioned for two weeks.

16. On 19 December 1995, the Istanbul State Security Court allegedly convicted the journalist Mr. Ragip Duran to a 10-month prison sentence and payment of a fine of 333,333,333 liras (the approximate equivalent of US$ 4,000) for "conducting propaganda in favour of an illegal organization".

17. On 8 January 1996, a 28-year-old photographer for the daily Evrensel, Mr. Metin Goktepe, died from a brain haemorrhage while in police custody. The case is under investigation by the parliamentary human rights committee. Forty-eight policemen have been charged in relation to the death of Mr. Goktepe.

18. In January 1996, the medical doctor Mr. Tufan Kose and the lawyer Mr. Mustafa Cinkilic, both staff members of the rehabilitation centre for torture victims in Adana which has been established by the Human Rights Foundation of Turkey (HRFT), were allegedly charged with the crimes of withholding information about criminal behaviour and disobeying the orders of official authorities. These charges reportedly resulted from their unwillingness to disclose the medical records of the 167 persons who have sought the services of the rehabilitation centre. Allegedly, the organization was not permitted to make use of the word "torture" in its name.

19. On 6 February 1996, Mr. Abdurrahman Mustak was allegedly subjected to death threats while in detention. These threats were reportedly related to his having filed a petition to the European Commission on Human Rights of the Council of Europe concerning ill-treatment he had allegedly been subjected to by security forces in the village of Yesilgurt, near Cizre, in Sirnak province, on 15 January 1989.

20. On 24 May 1996, the issue of the weekly Aydinlik was seized at the presses on charges that it was pornographic. The seizure came after the

weekly had complied with a court order not to publish an article alleging that a high-ranking public official, who was mentioned by name, had ties with organized crime.

21. On 13 June 1996, Ms. Gulcin Ozgur, aged 15, was allegedly arrested in her house in Mersin and detained at police headquarters after having publicly stated that she had been sexually assaulted and tortured during a previous period of detention, in February 1996, in the Bismil district of Diyarbakir province.

22. On 7 August 1996, the Istanbul Criminal Court allegedly ordered the banning from publication of the book entitled Stories from the Canonical Law written by Prof. Ilhan Arsel. The presiding judge allegedly motivated the court's decision, stating that "the contents of the book were considered offensive to the religion of Islam and to its prophet".

23. On 15 October 1996, Istanbul police allegedly took into custody Mr. Sanar Yurdatapan, composer, musician, editor, human rights activist and spokesperson for the "Freedom of Thought Initiative". Subsequently, Mr. Yurdatapan was allegedly charged under article 169 of the Turkish Penal Code, which prohibits membership of an illegal armed organization and aiding members of such organizations.

24. On 6 November 1996, anti-riot police allegedly arrested Ms. Filiz Kocali, editor-in-chief of the women's monthly Pazartesi, while she was covering a demonstration in Istanbul's Beyazit square.

B. Legal framework

25. The Special Rapporteur in this section briefly considers some aspects of the legal framework governing the promotion and protection of the right to freedom of opinion and expression in Turkey for the purpose of assessing the country's compliance with obligations arising under international human rights law.

International obligations

26. Turkey accepted a range of international obligations in the field of human rights. It is a party to a number of United Nations human rights instruments including the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child. Turkey has not acceded to the International Covenant on Civil and Political Rights, nor to the International Covenant on Economic, Social and Cultural Rights. In 1954, Tureky ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms. In 1987, it recognized the right to individual petition under article 25 of this Convention. Turkey furthermore accepted, in 1990, the compulsory jurisdiction of the European Court of Human Rights which became effective in 1991. Under the European Convention, Turkey has so far been confronted with a total of some 800 individual complaints. A number of these cases concern allegations that include violations of the right of petition under the European Convention. These allegations relate especially to events that took place in the eastern and south-eastern part of the country.

27. One such case merits mentioning in the context of this report. The case Akdivar et al. v. Turkey (Council of Europe - European Court of Human Rights document 99/1995/605/693) concerned a 1992 attack by the terrorist organization PKK on a village in the province of Diyarbakir, a subsequent search for terrorists in the area by the security forces and the evacuation and destruction of the village. In this case, the European Court of Human Rights ruled, on 16 September 1996, that illicit and unacceptable pressure had been exerted on the applicants to withdraw the applications they had submitted under the European Convention and that consequently the right to individual petition of these applicants had been violated. The Court noted that all applicants must be able to communicate freely with the European Commission without being subjected to any form of pressure from the authorities to withdraw or modify their complaints.

28. In the context of the Organization for Security and Cooperation in Europe (OSCE, previously the Conference on Security and Cooperation in Europe - CSCE), Turkey accepted many more international obligations. These include the 1975 Helsinki Final Act, the 1990 Charter of Paris for a New Europe and the 1992 Concluding Document of "Helsinki-II".

National legislation

29. Turkey is a unitary republic and its Constitution is devised to grant inalienable rights to all citizens of the Republic based on the conviction that all citizens are born free and equal in dignity and rights. Clearly, the purpose of these inalienable individual rights is to protect the human dignity of all the people of Turkey.

30. Under penal law, the incitement to disobey the law, to praise a deed which is a felony or to praise such deed and thereby to provoke vengeance and enmity is prohibited (under art. 312). In its application, ethnic propaganda is considered to provoke such enmity and is therefore punished. The Penal Code further considers it a crime to insult the President (art. 158) and to insult or vilify the nation or the authorities (art. 159).

31. The Press Law provides that the prosecutor may halt the distribution of a newspaper or magazine without first obtaining a court order. The prosecutor may, upon having halted this distribution, seek to obtain such court order from a State Security court, consisting of one military and two civilian judges, as opposed to an ordinary court. The application of this law leads to frequent confiscations. Less frequently, temporary closures or bannings are imposed.

32. In 1991, an Anti-Terror Law was introduced to replace a number of articles in the Penal Code that were hitherto used for the prosecution of writers and journalists. This law, however, defined terrorism and support for terrorism in a very broad manner. For example, to exert pressure with the aim of changing the characteristics of the Republic as defined by the Constitution (art. 1) was considered to constitute an act of terrorism. Also, written and oral propaganda aimed at damaging the indivisible unity of the State, regardless of the intention or ideas behind them (art. 8), was to be punished by a sentence of between two and five years' imprisonment. The application of the law resulted in convictions on the basis of non-violent opinions that did not pose a clear and imminent danger to the State. In 1996, widespread

criticism of the law and recognition by the Government that it was not fully compatible with the obligations arising under the European Convention on Human Rights, prompted the Government to amend it and narrow the scope of the offence as stipulated in article 8. In a subsequent re-examination of cases on the basis of the amended Anti-Terror Law numerous persons have had their sentences suspended or revoked. The Government informed the Special Rapporteur that the text of the amended Law has the same legal status as the text of the grounds motivating the promulgation of the law with which it is published, and that the grounds motivating the recent amendments of the Law stipulate that article 8 can only be applied by the court if the expression concerned incites to violence.

33. Emergency rule has been declared in 10 provinces in the eastern and south-eastern parts of the country. In these provinces the civilian governors exercise certain powers that include the right to impose restrictions on the press and media and the right to hold persons who are allegedly involved in certain crimes in incommunicado detention for a period of up to 30 days. The Government stated expressly that it did not derogate from the right to freedom of expression even though the emergency rule reserves this right to the Government.

C. Information received by the Special Rapporteur

Government policy

34. To further the protection of the right to freedom of opinion and expression, the Government has in recent years taken a number of legislative and policy measures. These include the following.

35. In 1990, a parliamentary commission on human rights was established with the power to monitor the human rights situation in Turkey and abroad. Currently, the commission consists of 25 parliamentarians, three consultants and four secretaries. Since its inception, and with regard to the situation inside Turkey, the commission has taken up some 20 cases at its own initiative. Most of these cases relate to alleged violations of physical integrity. One of the cases taken up by the commission concerns Mr. Metin Goktepe (see sect. A above). Furthermore, the commission received over 4,000 cases relating to various allegations of human rights violations. Plans exist to pass legislation during the present parliamentary year on the establishment of two sub-committees, one on the examination of cases and the other on consultations with non-governmental organizations and other non-parliamentary parties working for human rights.

36. Also, human rights courses and seminars were organized for prison staff, police and gendarmerie officers and civil servants. Limitations on political activities of civil servants and trade unions were lifted to a great extent and rules governing the establishment of associations and the formation of political parties were liberalized. The voting age was lowered from 21 to 18 years.

37. In 1991 and 1992, legislation banning the expression of communist ideas, religious propaganda and publishing in languages other than Turkish was retracted. In 1993, an amendment of the Constitution allowed for the creation of private radio and television. And in 1995, amendments to the Anti-Terror

Law introduced the requirement for the courts to incorporate the criteria of aim and intent to disrupt the integrity of the country on the part of suspects in the motivation of their verdicts.

38. In July 1996, the Government presented its programme on human rights to the Grand National Assembly. It announced that all measures would be taken to lift the state of emergency; that all obstacles with regard to the rights of individuals and the right to seek justice would be eliminated; and that necessary measures would be taken to promote freedom of thought and expression. In particular, attention was given to the media, on which the programme stated: "The legislative arrangements to solve issues of the media will be worked out through consultation with voluntary representative organizations of the sector. Legislative arrangements will be made to enable our citizens to exercise their right to receive information fully. In these arrangements, any infringements on individual rights will be definitely prevented. Our Government will do everything necessary to promote freedom of communication."

Selected issues

39. The Turkish media have both grown in numbers and diversified. At present there are 16 national and 360 local television stations and some 1,500 local radio stations. Over 40 newspapers are distributed nationwide. There are some 2,000 local newspapers. The ownership of the press and media tends towards monopolization. A large majority of media outlets are concentrated in the two concerns "Sabah" and "Milliyet-Hurriyet" but there is ample room for diversity. Today, more than ever, all Turkish citizens enjoy the right to information.

40. The Special Rapporteur was informed of the regular occurrence of death threats against persons seeking to participate in public affairs. This places a heavy mortgage on the openness of political debate in the country. It induces fear in the hearts of all who wish to contribute to political solutions by means of public debate and actions that result from such debate rather than from violence, intimidation and threats. This atmosphere of fear creates a number of taboos that exist in public speech in Turkey and that concern all subjects that could possibly trigger a violent response. A degree of reluctance exists on the part of all persons to fully express their opinions in view of the personal risks involved.

41. The Kurdish question divides the political landscape of Turkey into a number of heavily ideologically entrenched positions. To do justice to the complexity of this question goes beyond the confines of this report and of the mandate of the Special Rapporteur. However, the Special Rapporteur believes that human rights cannot be promoted or protected without taking into consideration relevant aspects of the context in which human rights are implemented. Conversely, faithful implementation requires full recognition of all obligations that arise for the State in its adherence to universal human rights. Therefore, inasmuch as this question touches upon the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur finds it appropriate to present his views on it.

42. As it relates to freedom of expression, the Kurdish question consists of a positive element - cultural identity as an essential part of the universal

human dignity protected by human rights - and a negative element - the political usurpation of this identity by those who seek to gain and retain power by all means, including terrorism.

43. As all over the world, in Turkey also some people more than others feel that their religion, ethnicity, language or other elements of their culture are essential aspects of their human dignity. This is a positive sentiment and a source of richness for all of us. It is also a truism. Indeed, human beings simply cannot exist without culture and everybody's identity and human dignity would be an empty shell without it. It would be like feeling Turkish but not able to read Yasar Kemal or to listen to Zulfur Livaneli. At the same time, and by definition, what is specific to one sets one apart from the other. Many different cultural identities exist and no single identity applies rigidly to all. Lastly, all cultures are the product of the people that shape and share them. They are subject to constant change. Any honest defence of cultural specificity should take these essential points into account.

44. To have a cultural identity requires having the liberty to express it and protect it when it is threatened. But not by any means possible. Not by threatening other identities or by negating universal human rights. Certainly not by violent means. The use of violence is in itself based on the negation of human rights. Therefore, it is devoid of sincerity to claim that in order to safeguard one's own cultural identity the human rights of others must be negated.

45. Too often - and tragically so - some political leaders around the world seek to make use of existing feelings of cultural identity, not to defend it, but rather to strengthen their position of power. Seldom do they allow the persons they claim to be defending to speak out; never do they allow the persons with whom they claim to share a culture to disagree about what that culture is. When an individual or organization claiming affiliation with a particular cultural identity aspires to power, and seeks to achieve it through the abuse and manipulation of genuine feelings of cultural identity of members of the group, it would be wrong to expect that, once power has been secured, the individual/group will be genuine defenders of human rights; this is particularly true if in their ascent to power they have resorted to acts of terrorism or general violence.

46. The crux of the issue of cultural identity and freedom of expression, therefore, lies in the adequacy of existing legislative safeguards and the depth of the political support for universally recognized human rights in Turkey. One test of this adequacy and depth is the distinction that should consistently be made between incitement to hatred and the use of violence on the one hand, and non-violent calls for greater liberty in the assertion of a specific cultural identity on the other. Turkish society is deeply divided on the question of where to draw this line. Too often, it appears, no attempt is even made to clearly distinguish between the two. Thus, an opinion that expresses a degree of understanding for terrorist violence or that tries to explain supposed reasons for that violence without simultaneously and expressly condemning it risks being considered an act in praise of a felony or an incitement to disobey the law. As such, this opinion would then be punishable under article 312 of the Penal Code. The Special Rapporteur notes that the question of whether this is permissible under international human

rights law merits meticulous attention. In particular, there exists a need for the court in such cases to adequately consider the imminence and clarity of the risk involved for public order or national security. An express and clear incitement to hatred or to the use of violence that poses a clear and imminent danger to the legitimate interests of the State and all of its citizens calls for the State to take strong action to protect all human rights as well as national security and public order, bearing in mind the necessity and proportionality of those measures in relation to the threat posed.

47. This distinction between genuine threat and legitimate protest is not always clear. However, precisely because of the difficulty of making the distinction, it is important to provide for an adequate and publicly known procedure in order to be able to do so. Apart from the elements mentioned in this section, the Special Rapporteur refers all who take an interest in this matter to the Johannesburg Principles on National Security, Freedom of Expression and Access to Information (E/CN.4/1996/39, annex) which offer guidance in finding the elements that such procedure should contain in order to make this distinction with adequate care.

II. CONCLUDING OBSERVATIONS

48. On the basis of all credible information presented to him in good faith, the Special Rapporteur concludes the following.

49. Freedom of opinion and expression in Turkey is widely apparent in fierce political debating, including severe criticism of the members and the policies of the Government on a range of specific issues. The press and other media are vibrant and varied. Forms of cultural expression are diversifying and growing numbers of people have access to this information.

50. The Government of Turkey has made continuous efforts to improve the protection of human rights in general. It has acceded to various international human rights instruments through the United Nations, the Council of Europe, and the Organization for Security and Cooperation in Europe. It improved national legislation to make it compatible with these instruments and took further measures in the area of human rights training of government personnel.

51. The Government of Turkey has in recent history consistently taken steps aimed at strengthening the protection of the right to freedom of opinion and expression. Among these steps rank prominently the lifting of the prohibition on the oral and written public use of Kurdish and the amendments to the Anti-Terror Law that tightened the rules of proof by requiring the courts to determine malicious intent or aim on the part of suspects.

52. Nevertheless, doubt as to full compliance by Turkey with its obligation to protect the right to freedom of expression still exists. In particular, such doubt arises in relation to the mandate of the Special Rapporteur, from consistent and credible reports on the following events:

(a) The death or torture of press professionals while in police custody;

(b) The subjection to threats and harassment of writers, journalists and human rights advocates and their persecution, in certain cases, for the expression of non-violent opinions;

(c) The use of disproportionate violence against journalists and protesters during demonstrations;

(d) The intimidation of human rights advocates and victims of and witnesses to alleged human rights violations because of their attempts to take legal or public action to seek redress or compensation for such violations;

(e) The regular occurrence of suspension of the media and seizure of newsprint;

(f) The lack of precision of various national laws and rules of proof on the basis of which courts justify restrictions on the right to freedom of opinion and expression.

53. A number of problems merit special consideration, in order to place the situation as regards freedom of expression in its proper context.

54. First among these is the pernicious problem of politically motivated violence in society. The Government faces a very difficult task and heavy responsibility in its obligation to protect all citizens of the Turkish Republic from the scourge of terrorism while simultaneously protecting all human rights of all the people of Turkey.

55. Secondly, while the press and other media are vivid, the Special Rapporteur finds that, at times, the press is not inspired by a vision of itself as a professional force that serves to inform all members of the public. Rather, many individuals within the press community appear to see themselves exclusively or predominantly as partisans in a political struggle. For these reasons, a systematic attempt at separating facts from opinions is at times lacking in the press and other media. The Special Rapporteur acknowledges that this problem is by no means specific to Turkey but he nevertheless signals its potentially harmful consequences. The tension between professional ethics and the taking of clear positions is part and parcel of the press and its freedom. It is for a free press itself, as an essential element of civil society, to balance that tension. To do that well shall make all society profit from the information that everybody has the right to seek, impart and receive. Only balanced information invites the general public to participate in public affairs rather than to turn their backs on them. A flow of information that either ignores or oversimplifies politically sensitive issues, including the Kurdish question or the question of the structure of the State, actively encourages civil society to lose its confidence in the ability of the society as a whole to solve Turkey's problems through debate. Such a loss of confidence would encourage the pursuit of politics by means other than debate.

56. The Special Rapporteur finds that the civil society as a whole shows a growing interest in issues relating to human rights. At the same time, he cannot escape from the impression that many of the advantages to be derived from a well-implemented right to freedom of opinion and expression for all types of conflict in society need to be more widely recognized recognition by

society at large. The equal enjoyment by all of the right to freedom of opinion and expression acts as a balm for the wounds of society. In promoting this recognition, many writers, artists and intellectuals perform an essential role, as do individual human rights defenders and non-governmental organizations working for the defence of human rights, such as the Turkish Foundation for Human Rights and the Turkish Human Rights Association. They are catalysts of this process which, in the opinion of the Special Rapporteur, is of vital importance to the future of Turkey.

III. RECOMMENDATIONS

57. On the basis of the principal observations and concerns set out in the previous section, the Special Rapporteur would like to offer the following recommendations. In view of the open and constructive exchanges of views with the Government that took place during his visit, he is convinced that these recommendations will be received in a spirit that is guided by a shared commitment to the strengthening of the promotion and protection of the right to freedom of opinion and expression.

58. The Government of Turkey is strongly encouraged to consider taking further steps to fully guarantee the protection of the right to freedom of opinion and expression. These steps should include amendments to relevant national legislation and the adoption of administrative and policy measures requiring the courts to explain more explicitly the motivation for any judgement that restricts the right to freedom of opinion and expression and to link such judgements more directly to the obligation on the part of the State to protect the right to freedom of opinion and expression. Such motivation should include the explicit consideration of the intent, purpose and effect of the opinion expressed. It should furthermore include the explicit consideration of the necessity, purpose, effect and proportionality of the restriction imposed by the courts. Persons sentenced to a fine or a term of imprisonment solely for the peaceful expression of their opinions, including opinions that run counter to the philosophy of the State or might otherwise be considered as ill-conceived, should, on the basis of the aforementioned considerations, have their convictions annulled.

59. The Government of Turkey is strongly encouraged, in its defence of the legitimate interests of the State and all of the people on its territory - which includes its fight against terrorism - to continuously, consistently and publicly demonstrate and explain that any restrictions on the right to freedom of expression and opinion are imposed only to the extent strictly required by the exigencies of the situation. In particular, restrictions such as are being imposed today, including the banning of books, the seizure of newsprint, the closure of media outlets and the punishment of persons held responsible for threatening national security through the exercise of their right to freedom of opinion and expression, are to be explicitly justified in court proceedings. In their press releases the Government of Turkey could concentrate more on these issues.

60. The Government of Turkey is encouraged to give consideration to the cases referred to in this report, or to refer to any such cases it deems appropriate, in order to present its views on the matters raised, taking into account the recommendations offered.

61. The Government of Turkey is encouraged to demonstrate the maximum possible degree of openness in its policies aimed at the protection of the right to freedom of opinion and expression, in particular in those instances where it feels called upon to uphold the legitimate interests of the State and the public. The establishment of a national human rights commission, apart from the existing parliamentary commission, could be considered as a valuable measure to further this openness.

62. The Government of Turkey is encouraged to consider promoting a national debate on the question of freedom of expression, underlining its great and immediate relevance to all people in Turkey. To this effect, the Government is invited to translate into Turkish and to widely disseminate this report. The Government of Turkey is also encouraged to promote a regular and public exchange of views with non-governmental organizations concerned with human rights, human rights defenders and members of the academic community on issues relating to freedom of expression.

63. The press, other media, non-governmental organizations and individuals working in the field of human rights are encouraged to assist in organizing this debate by taking concrete and well-coordinated initiatives.

Postscript

64. The Special Rapporteur is aware that not all of his recommendations are easy to consider and follow up. He is also acutely aware that such measures, in order to have effect, should be supported by Turkish public opinion. The Special Rapporteur is firmly convinced that these measures will contribute to an implementation of the right to freedom of opinion and expression that is faithful to international human rights standards. Moreover, the clarity and visibility of such implementation will considerably broaden public knowledge, understanding and support for the need to protect the right to freedom of opinion and expression.

65. Having had the privilege of meeting with a wide variety of brilliant people in Turkey and having seen the horrendous pain and needless suffering stemming from the tragedy that terrorism today imposes on this country of limitless potential, the Special Rapporteur is convinced that the safeguarding of the right to freedom of opinion and expression by the Government and the support for such a policy by society as a whole have the potential to become the foundation for the building of a peaceful, prosperous and just future for Turkey.

Annex

PERSONS WITH WHOM THE SPECIAL RAPPORTEUR MET DURING HIS VISIT TO TURKEY

Istanbul

Mr. Attila Karaosmanoglu	Former Deputy Prime Minister Former First Vice-President of the World Bank Chairman of the Turkish Chamber of Industries
Mr. Yasar Kemal	Writer
Mr. Orhan Pamuk	Writer
Mr. Zülfü Livaneli	Musician, composer, writer, columnist (Milliyet)
Mr. Ragip Duran	Press professional (AFP, BBC)
Mr. Sanar Yurdatapan	Human Rights Association, Istanbul Branch
Mr. Aysenur Zarakolu	Publisher (detained in Sagmalcilar prison)
Mr. Ismail Besikçi	Writer, sociologist (detained in Istanbul Metris prison)
Mr. Esber Yamugdereli	Lawyer (case pending before State Security Court, Istanbul)

Diyarbakir

Mr. Bekir Selçuk	Chief Public Prosecutor, Diyarbakir State Security Court
Mr. Mahmut Sakar	Vice President, Human Rights Association Director, Diyarbakir Section
Ms. Bestas	Lawyer for family members of missing persons

Ankara

Mr. Gündüz Aktan	Deputy Under-Secretary of the Ministry of Foreign Affairs
Mr. Turhan Firat	Director-General, Ministry of Foreign Affairs
Mr. Turel Özkarol	Deputy Director-General, Ministry of Foreign Affairs
Mr. Ugur Ibrahim Hakkioglu	Under-Secretary of the Ministry of Justice
Mr. Cemal Sahir Akcay	Director-General for Prisons and Detention Centres, Ministry of Justice

Mr. Turgay Yücel	Director-General for International Law and Foreign Relations, Ministry of Justice
Mr. Demir Berberoglu	Chairman of the Human Rights Investigations Committee of the TGNA
Mr. Hüsnü Öndül	Secretary General, Human Rights Association
Mr. Tekin Akillioglu	Centre for Human Rights, Ankara University
Mr. Selahattin Esmer	Lawyer, Member of the Executive Board of the Human Rights Association
Mr. Yavuz Önen	President, Human Rights Foundation
Mr. Yilmaz Ensaroglu	General Director, Organization of Human Rights and Solidarity for Oppressed People
Mrs. Leyla Zana	Former MP (detained at Ankara Closed Prison)
Mr. Ibrahim Aksoy	Former MP (detained at Ankara Closed Prison)
Mr. Ergun Özbudun	President of Turkish Democracy Foundation
Mr. Mümtaz Soysal	Member of Parliament
Mr. Agah Oktay Güner	Vice-President of Motherland Party
Mr. Yücel Ayasli	Adviser, Ministry of Foreign Affairs